

Senator Lyle W. Hillyard proposes the following substitute bill:

PHYSICIAN TESTING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Keven J. Stratton

LONG TITLE

General Description:

This bill enacts language related to certain age-based physician testing.

Highlighted Provisions:

This bill:

- ▶ unless the test reflects certain nationally recognized standards, prohibits the following from requiring that a physician take a cognitive exam at a certain age:
 - a health care facility for purposes of employment, privileges, or reimbursement;
 - a managed care organization or other third party for purposes of reimbursement;

and

- the Division of Occupational and Professional Licensing for purposes of licensing; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:



26 [58-67-302](#), as last amended by Laws of Utah 2012, Chapters 162 and 225

27 [58-67-302.5](#), as last amended by Laws of Utah 2011, Chapter 214

28 [58-68-302](#), as last amended by Laws of Utah 2012, Chapters 162 and 225

29 ENACTS:

30 [26-21-30](#), Utah Code Annotated 1953

31 [31A-45-305](#), Utah Code Annotated 1953

32

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section [26-21-30](#) is enacted to read:

35 **[26-21-30](#). Prohibition on certain age-based physician testing.**

36 A health care facility may not require for purposes of employment, privileges, or
37 reimbursement, that a physician, as defined in Section [58-67-102](#), take a cognitive test when
38 the physician reaches a specified age, unless the test reflects nationally recognized standards
39 adopted by the American Medical Association for testing whether an older physician remains
40 able to provide safe and effective care for patients.

41 Section 2. Section [31A-45-305](#) is enacted to read:

42 **[31A-45-305](#). Prohibition on certain age-based physician testing.**

43 A managed care organization or other third party may not require for purposes of
44 reimbursement that a physician, as defined in Section [58-67-102](#), take a cognitive test when the
45 physician reaches a specified age, unless the test reflects nationally recognized standards
46 adopted by the American Medical Association for testing whether an older physician remains
47 able to provide safe and effective care for patients.

48 Section 3. Section [58-67-302](#) is amended to read:

49 **[58-67-302](#). Qualifications for licensure.**

50 (1) An applicant for licensure as a physician and surgeon, except as set forth in

51 Subsection (2), shall:

52 (a) submit an application in a form prescribed by the division, which may include:

53 (i) submissions by the applicant of information maintained by practitioner data banks,
54 as designated by division rule, with respect to the applicant;

55 (ii) a record of professional liability claims made against the applicant and settlements
56 paid by or on behalf of the applicant; and

57 (iii) authorization to use a record coordination and verification service approved by the
58 division in collaboration with the board;

59 (b) pay a fee determined by the department under Section 63J-1-504;

60 (c) be of good moral character;

61 (d) provide satisfactory documentation of having successfully completed a program of
62 professional education preparing an individual as a physician and surgeon, as evidenced by:

63 (i) having received an earned degree of doctor of medicine from an LCME accredited
64 medical school or college; or

65 (ii) if the applicant graduated from a medical school or college located outside the
66 United States or its territories, submitting a current certification by the Educational
67 Commission for Foreign Medical Graduates or any successor organization approved by the
68 division in collaboration with the board;

69 (e) satisfy the division and board that the applicant:

70 (i) has successfully completed 24 months of progressive resident training in a program
71 approved by the ACGME, the Royal College of Physicians and Surgeons, the College of
72 Family Physicians of Canada, or any similar body in the United States or Canada approved by
73 the division in collaboration with the board; or

74 (ii) (A) has successfully completed 12 months of resident training in an ACGME
75 approved program after receiving a degree of doctor of medicine as required under Subsection
76 (1)(d);

77 (B) has been accepted in and is successfully participating in progressive resident
78 training in an ACGME approved program within Utah, in the applicant's second or third year
79 of postgraduate training; and

80 (C) has agreed to surrender to the division the applicant's license as a physician and
81 surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
82 and has agreed the applicant's license as a physician and surgeon will be automatically revoked
83 by the division if the applicant fails to continue in good standing in an ACGME approved
84 progressive resident training program within the state;

85 (f) pass the licensing examination sequence required by division rule made in
86 collaboration with the board;

87 (g) be able to read, write, speak, understand, and be understood in the English language

88 and demonstrate proficiency to the satisfaction of the board if requested by the board;

89 (h) meet with the board and representatives of the division, if requested, for the
90 purpose of evaluating the applicant's qualifications for licensure;

91 (i) designate:

92 (i) a contact person for access to medical records in accordance with the federal Health
93 Insurance Portability and Accountability Act; and

94 (ii) an alternate contact person for access to medical records, in the event the original
95 contact person is unable or unwilling to serve as the contact person for access to medical
96 records; and

97 (j) establish a method for notifying patients of the identity and location of the contact
98 person and alternate contact person, if the applicant will practice in a location with no other
99 persons licensed under this chapter.

100 (2) An applicant for licensure as a physician and surgeon by endorsement who is
101 currently licensed to practice medicine in any state other than Utah, a district or territory of the
102 United States, or Canada shall:

103 (a) be currently licensed with a full unrestricted license in good standing in any state,
104 district, or territory of the United States, or Canada;

105 (b) have been actively engaged in the legal practice of medicine in any state, district, or
106 territory of the United States, or Canada for not less than 6,000 hours during the five years
107 immediately preceding the date of application for licensure in Utah;

108 (c) comply with the requirements for licensure under Subsections (1)(a) through (d),
109 (1)(e)(i), and (1)(g) through (j);

110 (d) have passed the licensing examination sequence required in Subsection (1)(f) or
111 another medical licensing examination sequence in another state, district or territory of the
112 United States, or Canada that the division in collaboration with the board by rulemaking
113 determines is equivalent to its own required examination;

114 (e) not have any investigation or action pending against any health care license of the
115 applicant, not have a health care license that was suspended or revoked in any state, district or
116 territory of the United States, or Canada, and not have surrendered a health care license in lieu
117 of a disciplinary action, unless:

118 (i) the license was subsequently reinstated as a full unrestricted license in good

119 standing; or

120 (ii) the division in collaboration with the board determines to its satisfaction, after full
121 disclosure by the applicant, that:

122 (A) the conduct has been corrected, monitored, and resolved; or

123 (B) a mitigating circumstance exists that prevents its resolution, and the division in
124 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
125 would be reinstated;

126 (f) submit to a records review, a practice history review, and comprehensive
127 assessments, if requested by the division in collaboration with the board; and

128 (g) produce satisfactory evidence that the applicant meets the requirements of this
129 Subsection (2) to the satisfaction of the division in collaboration with the board.

130 (3) An applicant for licensure by endorsement may engage in the practice of medicine
131 under a temporary license while the applicant's application for licensure is being processed by
132 the division, provided:

133 (a) the applicant submits a complete application required for temporary licensure to the
134 division;

135 (b) the applicant submits a written document to the division from:

136 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
137 Licensing and Inspection Act, stating that the applicant is practicing under the:

138 (A) invitation of the health care facility; and

139 (B) the general supervision of a physician practicing at the facility; or

140 (ii) two individuals licensed under this chapter, whose license is in good standing and
141 who practice in the same clinical location, both stating that:

142 (A) the applicant is practicing under the invitation and general supervision of the
143 individual; and

144 (B) the applicant will practice at the same clinical location as the individual;

145 (c) the applicant submits a signed certification to the division that the applicant meets
146 the requirements of Subsection (2);

147 (d) the applicant does not engage in the practice of medicine until the division has
148 issued a temporary license;

149 (e) the temporary license is only issued for and may not be extended or renewed

150 beyond the duration of one year from issuance; and

151 (f) the temporary license expires immediately and prior to the expiration of one year
152 from issuance, upon notification from the division that the applicant's application for licensure
153 by endorsement is denied.

154 (4) The division shall issue a temporary license under Subsection (3) within 15
155 business days after the applicant satisfies the requirements of Subsection (3).

156 (5) The division may not require the following requirements for licensure:

157 (a) a post-residency board certification [~~as a requirement for licensure.~~]; or

158 (b) a cognitive test when the physician reaches a specified age, unless the test reflects
159 nationally recognized standards adopted by the American Medical Association for testing
160 whether an older physician remains able to provide safe and effective care for patients.

161 Section 4. Section **58-67-302.5** is amended to read:

162 **58-67-302.5. Licensing of graduates of foreign medical schools.**

163 (1) Notwithstanding any other provision of law to the contrary, an individual enrolled
164 in a medical school outside the United States, its territories, the District of Columbia, or
165 Canada is eligible for licensure as a physician and surgeon in this state if the individual has
166 satisfied the following requirements:

167 (a) meets all the requirements of Subsection **58-67-302**(1), except for Subsection
168 **58-67-302**(1)(d);

169 (b) has studied medicine in a medical school located outside the United States which is
170 recognized by an organization approved by the division;

171 (c) has completed all of the formal requirements of the foreign medical school except
172 internship or social service;

173 (d) has attained a passing score on the educational commission for foreign medical
174 graduates examination or other qualifying examinations such as the United States Medical
175 Licensing Exam parts I and II, which are approved by the division or a medical school
176 approved by the division;

177 (e) has satisfactorily completed one calendar year of supervised clinical training under
178 the direction of a United States medical education setting accredited by the liaison committee
179 for graduate medical education and approved by the division;

180 (f) has completed the postgraduate hospital training required by Subsection

181 58-67-302(1)(e)(i); and

182 (g) has passed the examination required by the division of all applicants for licensure.

183 (2) Satisfaction of the requirements of Subsection (1) is in lieu of:

184 (a) the completion of any foreign internship or social service requirements; and

185 (b) the certification required by Subsection 58-67-302(1)(d).

186 (3) Individuals who satisfy the requirements of Subsections (1)(a) through (f) shall be

187 eligible for admission to graduate medical education programs within the state, including

188 internships and residencies, which are accredited by the liaison committee for graduate medical

189 education.

190 (4) A document issued by a medical school located outside the United States shall be

191 considered the equivalent of a degree of doctor of medicine for the purpose of licensure as a

192 physician and surgeon in this state if:

193 (a) the foreign medical school is recognized by an organization approved by the
194 division;

195 (b) the document granted by the foreign medical school is issued after the completion
196 of all formal requirements of the medical school except internship or social service; and

197 (c) the foreign medical school certifies that the person to whom the document was
198 issued has satisfactorily completed the requirements of Subsection (1)(c).

199 (5) The division may not require as a requirement for licensure a cognitive test when
200 the physician reaches a specified age, unless the test reflects nationally recognized standards
201 adopted by the American Medical Association for testing whether an older physician remains
202 able to provide safe and effective care for patients.

203 [~~5~~] (6) The provisions for licensure under this section shall be known as the "fifth
204 pathway program."

205 Section 5. Section 58-68-302 is amended to read:

206 **58-68-302. Qualifications for licensure.**

207 (1) An applicant for licensure as an osteopathic physician and surgeon, except as set
208 forth in Subsection (2), shall:

209 (a) submit an application in a form prescribed by the division, which may include:

210 (i) submissions by the applicant of information maintained by practitioner data banks,
211 as designated by division rule, with respect to the applicant;

212 (ii) a record of professional liability claims made against the applicant and settlements
213 paid by or on behalf of the applicant; and

214 (iii) authorization to use a record coordination and verification service approved by the
215 division in collaboration with the board;

216 (b) pay a fee determined by the department under Section 63J-1-504;

217 (c) be of good moral character;

218 (d) provide satisfactory documentation of having successfully completed a program of
219 professional education preparing an individual as an osteopathic physician and surgeon, as
220 evidenced by:

221 (i) having received an earned degree of doctor of osteopathic medicine from an AOA
222 approved medical school or college; or

223 (ii) submitting a current certification by the Educational Commission for Foreign
224 Medical Graduates or any successor organization approved by the division in collaboration
225 with the board, if the applicant is graduated from an osteopathic medical school or college
226 located outside of the United States or its territories which at the time of the applicant's
227 graduation, met criteria for accreditation by the AOA;

228 (e) satisfy the division and board that the applicant:

229 (i) has successfully completed 24 months of progressive resident training in an
230 ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine
231 required under Subsection (1)(d); or

232 (ii) (A) has successfully completed 12 months of resident training in an ACGME or
233 AOA approved program after receiving a degree of doctor of osteopathic medicine as required
234 under Subsection (1)(d);

235 (B) has been accepted in and is successfully participating in progressive resident
236 training in an ACGME or AOA approved program within Utah, in the applicant's second or
237 third year of postgraduate training; and

238 (C) has agreed to surrender to the division the applicant's license as an osteopathic
239 physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative
240 Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon
241 will be automatically revoked by the division if the applicant fails to continue in good standing
242 in an ACGME or AOA approved progressive resident training program within the state;

- 243 (f) pass the licensing examination sequence required by division rule, as made in
244 collaboration with the board;
- 245 (g) be able to read, write, speak, understand, and be understood in the English language
246 and demonstrate proficiency to the satisfaction of the board, if requested by the board;
- 247 (h) meet with the board and representatives of the division, if requested for the purpose
248 of evaluating the applicant's qualifications for licensure;
- 249 (i) designate:
- 250 (i) a contact person for access to medical records in accordance with the federal Health
251 Insurance Portability and Accountability Act; and
- 252 (ii) an alternate contact person for access to medical records, in the event the original
253 contact person is unable or unwilling to serve as the contact person for access to medical
254 records; and
- 255 (j) establish a method for notifying patients of the identity and location of the contact
256 person and alternate contact person, if the applicant will practice in a location with no other
257 persons licensed under this chapter.
- 258 (2) An applicant for licensure as an osteopathic physician and surgeon by endorsement
259 who is currently licensed to practice osteopathic medicine in any state other than Utah, a
260 district or territory of the United States, or Canada shall:
- 261 (a) be currently licensed with a full unrestricted license in good standing in any state,
262 district or territory of the United States, or Canada;
- 263 (b) have been actively engaged in the legal practice of osteopathic medicine in any
264 state, district or territory of the United States, or Canada for not less than 6,000 hours during
265 the five years immediately preceding the day on which the applicant applied for licensure in
266 Utah;
- 267 (c) comply with the requirements for licensure under Subsections (1)(a) through (d),
268 (1)(e)(i), and (1)(g) through (j);
- 269 (d) have passed the licensing examination sequence required in Subsection (1)(f) or
270 another medical licensing examination sequence in another state, district or territory of the
271 United States, or Canada that the division in collaboration with the board by rulemaking
272 determines is equivalent to its own required examination;
- 273 (e) not have any investigation or action pending against any health care license of the

274 applicant, not have a health care license that was suspended or revoked in any state, district or
275 territory of the United States, or Canada, and not have surrendered a health care license in lieu
276 of a disciplinary action, unless:

277 (i) the license was subsequently reinstated as a full unrestricted license in good
278 standing; or

279 (ii) the division in collaboration with the board determines, after full disclosure by the
280 applicant, that:

281 (A) the conduct has been corrected, monitored, and resolved; or

282 (B) a mitigating circumstance exists that prevents its resolution, and the division in
283 collaboration with the board is satisfied that, but for the mitigating circumstance, the license
284 would be reinstated;

285 (f) submit to a records review, a practice review history, and physical and
286 psychological assessments, if requested by the division in collaboration with the board; and

287 (g) produce evidence that the applicant meets the requirements of this Subsection (2) to
288 the satisfaction of the division in collaboration with the board.

289 (3) An applicant for licensure by endorsement may engage in the practice of medicine
290 under a temporary license while the applicant's application for licensure is being processed by
291 the division, provided:

292 (a) the applicant submits a complete application required for temporary licensure to the
293 division;

294 (b) the applicant submits a written document to the division from:

295 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
296 Licensing and Inspection Act, stating that the applicant is practicing under the:

297 (A) invitation of the health care facility; and

298 (B) the general supervision of a physician practicing at the health care facility; or

299 (ii) two individuals licensed under this chapter, whose license is in good standing and
300 who practice in the same clinical location, both stating that:

301 (A) the applicant is practicing under the invitation and general supervision of the
302 individual; and

303 (B) the applicant will practice at the same clinical location as the individual;

304 (c) the applicant submits a signed certification to the division that the applicant meets

305 the requirements of Subsection (2);

306 (d) the applicant does not engage in the practice of medicine until the division has
307 issued a temporary license;

308 (e) the temporary license is only issued for and may not be extended or renewed
309 beyond the duration of one year from issuance; and

310 (f) the temporary license expires immediately and prior to the expiration of one year
311 from issuance, upon notification from the division that the applicant's application for licensure
312 by endorsement is denied.

313 (4) The division shall issue a temporary license under Subsection (3) within 15
314 business days after the applicant satisfies the requirements of Subsection (3).

315 (5) The division may not require the following as a requirement for licensure:

316 (a) a post-residency board certification [~~as a requirement for licensure.~~]; or

317 (b) a cognitive test when the physician reaches a specified age, unless the test reflects
318 nationally recognized standards adopted by the American Medical Association for testing
319 whether an older physician remains able to provide safe and effective care for patients.

320 Section 6. **Contingent effective date.**

321 (1) Except as provided in Subsection (2), this bill takes effect when the Division of
322 Occupational and Professional Licensing certifies to the Health and Human Services Interim
323 Committee that the American Medical Association has adopted standards for testing whether
324 an older physician remains able to provide safe and effective care for patients.

325 (2) If the certification described in Subsection (1) does not occur before July 1, 2019,
326 this bill takes effect on July 1, 2019.